

285th District Court

Case Summary

Case No. 2021CI23705

Candy Bustamante Martinez ET AL VS Butterball, LLC §
 §
 §

Location: 285th District Court
 Judicial Officer: 285th, District Court
 Filed on: 11/12/2021

Case Information

Case Type: OTHER PRODUCT
 LIABILITY

Case Status: 11/12/2021 Pending

Assignment Information

Current Case Assignment

Case Number 2021CI23705
 Court 285th District Court
 Date Assigned 11/12/2021
 Judicial Officer 285th, District Court

Party Information

Lead Attorneys

Plaintiff Martinez, Candy Bustamante SNELL, DAVID C
 Retained

Defendant Butterball, LLC WARREN, LARRY DALE
 Retained

Events and Orders of the Court

11/12/2021 New Cases Filed (OCA)
 11/12/2021 PETITION
 11/12/2021 JURY FEE PAID
 11/12/2021 REQUEST FOR SERVICE AND PROCESS
 CIT PPS
 11/18/2021 Citation
 Butterball, LLC
 Served: 11/22/2021
 11/22/2021 RETURN OF SERVICE - SUCCESSFUL
 BUTTERBALL LLC
 12/13/2021 ORIGINAL ANSWER OF
 Butterball, LLC



2021CI23705

CANDY BUSTAMANTE MARTINEZ, §
INDIVIDUALLY AND AS NEXT §
FRIEND LILAH SALEH, A MINOR §

S S S S S S S S

____JUDICIAL DISTRICT

BUTTERBALL, LLC

BEXAR COUNTY, TEXAS

1

service, the Secretary of State is requested to forward a copy of the process and petition to Defendant Butterball, LLC, at its principal place of business, One Butterball Lane, Garner, NC 27529.

4. All of the acts or omissions giving rise to Plaintiff's cause of action occurred in Bexar County, Texas, where proper venue lies. Plaintiff seeks damages in excess of the minimum jurisdictional limits of this Court.

Factual Background

5. On or about November 12, 2019, Plaintiff prepared a meal for her family using a freshly opened package of Butterball turkey sausage she had purchased several days before in San Antonio, Texas. As Plaintiff and her young daughter, Lilah Saleh, were eating, Plaintiff suffered cuts to her tongue from shards of glass in the cooked turkey. The glass could not have come from anywhere but Butterball's facilities, as Plaintiff had opened the original package of sausage immediately before cooking it, and there was no possible source off the glass shards in her own kitchen.

6. Because Plaintiff's daughter had consumed quite a bit of the turkey, Plaintiff immediately took her to the emergency room to determine whether she had ingested any of the glass. Young Lilah was given a laxative and course of antibiotics at the ER. Plaintiff herself sought treatment the next day for the cuts on her tongue.

First Cause of Action: Strict Liability/Products Liability

7. At all times material to this action, Defendant was in the business of manufacturing food for human consumption. There was a manufacturing defect in the food

Defendant manufactured in that it was contaminated glass shards. This manufacturing defect was a proximate cause of Plaintiffs' resulting injuries and damages.

8. In addition, there was a marketing defect in the food at the time it was sold to Plaintiffs. The food was defective because it was contaminated with glass shards, and Defendant failed to give adequate warnings of the product's dangers that were known or should have been known to Defendant. Defendant further failed to give adequate instruction to avoid these dangers. This failure to provide such warnings and instructions rendered the food unreasonably dangerous, and this failure was a proximate cause of Plaintiffs' resulting injuries and damages.

Second Cause of Action: Negligence

9. The actions of Defendant in selling Plaintiffs contaminated food constitutes a breach of the duty of ordinary care in the manufacturing, preparation, testing, marketing, distribution, and selling of food. Defendant breached its duties in one or more of the following ways: negligent manufacturing, preparing, or storing the food; failing to properly test the food before placing in the stream of commerce; failing to warn of the dangers associated with the food; failure to warn or instruct consumers of a known defect in the food; failing to timely disclose post-sale information concerning the dangers associated with the food; failing to properly implement procedures to prevent contamination of food; and, failing to properly train its employees in the handling and preparation of food. These negligent acts were a proximate and producing cause of Plaintiffs' injuries and damages.

Third Cause of Action: Breach of Implied Warranty of Merchantability

10. Defendant is liable to Plaintiffs for breach of the implied warranty of merchantability as provided by Tex. Bus. & Com. Code § 2.314. In particular, Defendant

manufactured and sold food that was not fit for its ordinary purpose and lacked something necessary to be adequate. This breach of warranty on the part of Defendant was a proximate and producing cause of Plaintiffs' injuries and damages.

Statement of Damages Sought

11. As a result of the negligence and negligence per se on the part of Defendant, Plaintiffs have incurred, and likely will incur in the future, damages for the following: reasonable and necessary medical expenses; physical pain and mental anguish; temporary and permanent impairment; and, loss of wage-earning capacity. Plaintiffs plead that they seek damages in excess of \$200,000, but less than \$1,000,000.00.

Conditions Precedent

12. All conditions precedent to Plaintiffs' recovery have occurred or have been performed.

Jury Demand

13. Plaintiffs demand trial by jury and tenders the appropriate fee.

Notice of Reliance Pursuant to Rule 193.7

14. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby gives notice of intent to utilize all documents and tangible items produced by any party through discovery, together with all deposition exhibits and documents obtained by written questions, in any pre-trial proceeding and/or trial.

Request for Notice of Criminal Convictions

15. Pursuant to Rule 609 of the Texas Rules of Civil Evidence, Plaintiff hereby requests written notice of intent to use evidence of a conviction, if any, against any of the

witnesses named by Plaintiff as persons with knowledge of relevant facts. Sufficient advance written notice of intent to use such evidence is requested to provide a fair opportunity to contest the use of such evidence. Said notice is requested not later than thirty (30) days before trial.

WHEREFORE, Plaintiff prays that Defendant be cited and appear herein, for an early trial, and upon trial, judgment for the following:

- a. damages in an amount to exceed the minimum jurisdictional limits of this court;
- b. costs of court;
- c. pre-judgment and post-judgment interest at the highest rate allowed by law; and
- d. general relief.

Respectfully submitted,

BAYNE, SNELL, & KRAUSE
1250 N.E. Loop 410, Suite 725
San Antonio, Texas 78209
Email: dsnell@bsklaw.com
Telephone: (210) 824-3278
Telecopier: (210) 824-3937

By: /s/ David C. "Clay" Snell
David C. "Clay" Snell
State Bar No. 24011309
ATTORNEY FOR PLAINTIFFS

FILED
11/12/2021 11:39 AM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Monica Hernandez
Bexar County - 285th District Court



Cause Number: 2021CI23705

District Court : 285th

MARY ANGIE GARCIA
Bexar County District Clerk

CIT PPS / EMAIL

Request for Process

Style: Candy Bustamante Martinez **Vs.** Butterball, LLC

Request the following process: (Please check all that Apply)

☒ Citation ☐ Notice ☐ Temporary Restraining Order ☐ Notice of Application for Protective Order
☐ Temporary Protective Order ☐ Precept with hearing ☐ Precept without a hearing ☐ Writ of Attachment
☐ Writ of Habeas Corpus ☐ Writ of Garnishment ☐ Writ of Sequestration ☐ Capias ☐ Other: _____

1.

Name: Butterball, LLC

Registered Agent/By Serving: Texas Secretary of State

Address P.O. Box 12079, Austin, Texas 78711-2079

Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Commissioner of Insurance ☐ SA Express News ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Constable Pct _____

(Pct. 3 serves process countywide)

2.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Commissioner of Insurance ☐ SA Express News ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Constable Pct _____

(Pct. 3 serves process countywide)

3.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Commissioner of Insurance ☐ SA Express News ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Constable Pct _____

(Pct. 3 serves process countywide)

4.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Commissioner of Insurance ☐ SA Express News ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Constable Pct _____

(Pct. 3 serves process countywide)

Title of Document/Pleading to be Attached to Process: Plaintiff's Original Petition

Name of Attorney/Pro se: David C. "Clay" Snell

Bar Number: 24011309

Address: 1250 N.E. Loop 410, Suite 725

Phone Number: 210/824-3278

San Antonio, Texas 78209

Attorney for Plaintiff XXXX **Defendant** _____ **Other** _____

*****IF SERVICE IS NOT PICKED UP WITHIN 14 BUSINESS DAYS, SERVICE WILL BE DESTROYED*****

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

David Snell on behalf of David Snell
 Bar No. 24011309
 dsnell@bsklaw.com
 Envelope ID: 59110908
 Status as of 11/17/2021 5:06 PM CST

Associated Case Party: CandyBustamanteMartinez

Name	BarNumber	Email	TimestampSubmitted	Status
David C. "Clay"Snell		dsnell@bsklaw.com	11/12/2021 11:39:10 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Terri Monnett		terri@bsklaw.com	11/12/2021 11:39:10 AM	SENT

FILED
12/13/2021 3:51 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Teresa Diaz
Bexar County - 285th District Court

CAUSE NO. 2021CI23705

CANDY BUSTAMANTE MARTINEZ
Individually and as next friend of
LILAH SALEH, a Minor

V.

BUTTERBALL, LLC

§ **IN THE DISTRICT COURT**
§
§
§ **285TH JUDICIAL DISTRICT**
§
§
§ **BEXAR COUNTY, TEXAS**

DEFENDANT, BUTTERBALL, LLC'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF THE COURT:

Defendant, **BUTTERBALL, LLC**, in the above-styled and numbered cause, files their Original Answer to Plaintiff's Original Petition, and would show the Court as follows:

I.

Defendant, **BUTTERBALL, LLC**, denies generally the allegations contained in Plaintiff's Original Petition, and hereby ask for a trial of the issues before a jury.

WHEREFORE, PREMISES CONSIDERED, Defendant, **BUTTERBALL, LLC**, pray that upon final trial, Plaintiff takes nothing, and for such other and further relief, both general or specific, to which they may be entitled.

Respectfully submitted,

/s/ Larry D. Warren
LARRY D. WARREN
State Bar No. 20888450
NAMAN HOWELL SMITH & LEE, PLLC
10001 Reunion Place, Suite 600
San Antonio, Texas 78216
Telephone: (210) 731-6350
Facsimile: (210) 785-2950
lwarren@namanhowell.com
ATTORNEYS FOR DEFENDANT
BUTTERBALL, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of **December 2021**, the foregoing was filed with the Clerk of Court using the CM/ECF system, and was served on counsel via **E-Filing Notification System**:

David C. "Clay" Snell
State Bar No.: 24011309
BAYNE, SNELL & KRAUSE
1250 N.E. Loop 410, Suite 725
San Antonio, Texas 78209
Telephone: (210) 824-3278
Facsimile: (210) 824-3937
dsnell@bsklaw.com
ATTORNEYS FOR PLAINTIFF

/s/ Larry D. Warren
LARRY D. WARREN

Automated Certificate of eService

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Larry Warren on behalf of Larry Warren
Bar No. 20888450
lwarren@nhsl.com
Envelope ID: 59976075
Status as of 12/14/2021 11:42 AM CST

Associated Case Party: CandyBustamanteMartinez

Name	BarNumber	Email	TimestampSubmitted	Status
David C. "Clay"Snell		dsnell@bsklaw.com	12/13/2021 3:51:57 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Terri Monnett		terri@bsklaw.com	12/13/2021 3:51:57 PM	SENT